WEST LONDON RESTATEMENT OF PLO PRINCIPLES

20Th January 2023 – effective from 1st February 2023

On 16.1.23 the PFD chaired a detailed presentation in respect of the re-launch of the PLO. If you were not present, then a recording can be made available from the PFD office. I recommend you watch this. He has given a broad message and left it to the DFJs to prepare their own local guidance. I sent out a draft on 30.12.22 inviting responses. Other than from the Judges, I received 8, which I have taken into account.

This document should be read alongside the note I sent out on 30.12.22.

What I set out below will be subject to review at every performance Group meeting/WL FJB meeting (quarterly) and Court User Group (2 per year in each court). If there is a good reason to change any of it, then we will of course do so.

I have invited the part time judges who sit regularly for WL to a meeting on 24.1.23. It is important that the message and principles applied in this document are applied consistently by salaried and part time judiciary and magistrates.

The following matters are central to effective case management and should generally be adopted. There must always be judicial discretion to allow exceptions, but they must be kept to a minimum if these principles are to provide us with a functioning code of best practice.

1) Parties can expect the Judge/bench to be fair but also to be robust in management of cases.

Pre Proceedings:

2) LAs should continue in their attempts to divert cases away from proceedings through all safe and appropriate means and in accordance with PLWG guidance.

3) Pre-proceedings work will be expected in all cases where this would not compromise the child's safety and welfare, and where a parent is capable of engaging in this out of court process. When properly completed, pre-proceedings work will be respected. Pre-proceedings work includes, a comprehensive parenting assessment, early viability assessments of alternative carers, Family Group Conferences, formal requests of the police and of other agencies for the disclosure of documents. Where completed to the appropriate standard the court must consider those pre-proceedings assessments when determining the extent to which any further assessments is

'necessary'. If VAs have been conducted, the LA should ensure they are served on the subject within pre proceedings work.

On issue:

4) On issue the LA must file within its application (as an annex)
   a) a clear, focused, Re A compliant and properly considered threshold. Thresholds must be short and focused on what the LA seeks to prove. References to 'disclosure' must cease. It is hard to believe that they continue.
   b) an assessment plan, setting out assessments which have already been completed and a timetable for any other assessments necessary to determine the issues, with reasons why this is said to be necessary.
   c) Confirmation that, where police disclosure is sought, the 2013 Protocol and London memorandum has been complied with, giving the date upon which the formal request was made.

5) Upon A+G, a detailed gatekeeping order will include a direction that parents:

   a) File a full response to threshold after no more than 15 working days from issue, in default of which the court may find threshold has been met;
   b) nominate family members or friends whom they propose as alternative carers by no later than 2 working days before the CMH, including a warning that a failure to do so may result in them not being able to nominate anyone at a later stage in the proceedings, particularly where that would cause delay. It is for solicitors to explain to parents at an early stage that this is to enable a parallel plan to be considered, but that no final decisions have been made. It is for the LA to explain to the subjects of viability assessments the importance of engagement with the assessment at an early stage and that the court may not extend the time for such.

6) Urgent applications - The C100a must set out the grounds on which an urgent hearing is requested with suggested timescales for the duration of the hearing and when it is needed. If there are no or inadequate reasons or timescales, the A+G legal advisor/judge will refuse to authorise an urgent listing.

CMH:

7) I hope to agree with our 11 LAs a standard time frame for viability, parenting, kinship SGO assessments. I would hope this can be 3 weeks for VA and 12 weeks *from the date of the VA* for a full assessment. So far most agree to this and I will confirm this ASAP.

8) The CMH will be timetabled at 12-18 days to give the parents a realistic opportunity to meet their lawyers and respond to threshold by the time of the hearing.

9) A comprehensive order from the CMH, will set out a clear and fully timetabled route to the IRH. Directions will be complied with. Breaches of court orders, often euphemistically called 'non-compliance' is the subject of the document attached.

10) At the CMH the court will list who from the parents' friends and family is being put forward to be assessed, and the court may limit this number in its discretion. Advocates must be ready to tell the court whether a person has been approached by the parent, whether as support for the parents/another carer or as an alternative to the parent or another carer. The LA must be ready to tell the court if a FGC can be arranged (if not already) and the court may direct that it takes place by X date.

11) There are a great many missed assessment appointments by parents, rarely (but sometimes) for good reason. Sometimes this is only realised by solicitors at the AVM prior to the next hearing, with obvious delaying consequences. The CMO will contain a direction that a parent is expected to engage with the assessment/s and warned that non engagement may lead to the direction being discharged or the assessment report being filed without their input. The direction will say that the lead solicitor for the assessment must inform the allocated Judge that the parent has failed to engage, with a proposed revised timetable for bringing forward filing dates. If the appointment date is known at the CMH, it will be inserted into the order. The parents' solicitor must give clear advice to the parent that they must attend dates offered, or risk not being assessed.

12) Further CMHs are the exception and not the rule. They are not to be listed 'just in case' or 'to review' or 'to oversee the next step'. In essence, a speculative hearing will not be listed. If an additional hearing is sought in the future, a party must issue a C2, setting out what is required, why, when, for how long and what efforts have been made to resolve the issue without the need for a further hearing.

13) The presumption will be that a case is listed to IRH and no further until an effective IRH takes place. If a party seeks that, exceptionally, a FH should be listed at an early stage, prior to the IRH taking place, they can make that application, with a completed witness template, and the court will consider it on its merits. In this event, each Judge/legal advisor will inform Rishi on rishi.sood@justice.gov.uk what listing decision they have made, with very brief reasons, hearing dates and witness template – so that I can keep a record of this. There is no other way to capture the data. The listing decision is not mine however, it is the decision of each Judge or bench.

Experts:

14) Applications for experts will be scrutinised with the utmost care. They must be made in advance of the CMH and properly constituted. Permission to instruct an expert will only be given if it is necessary for the determination of the issues in the case. That important principle applies equally to ISWs. LAs can expect questions to be asked as to why assessments cannot be carried out in-house. Parents and Guardians will be asked to trust in the professional abilities of in-house social work teams and will be expected to explain why it is otherwise necessary to seek social work expertise from an ISW where an assessment can be carried out in-house. LAs may wish to provide further training to in-house SWs about assessment writing, evidence giving, and the importance of a SW providing their own professional opinion, when asked to do so.

IRH:

15) At IRH the court will provide a 'neutral' evaluation of the case having read the written evidence and encourage all parties to take a realistic/proportionate approach on the issues. In preparation for IRH:

a) lawyers will be expected to meet their clients before the IRH to ensure that they are fully briefed and have given the parents proper advice.
b) LAs will likewise be expected to have consulted their legal teams and considered the issues afresh having seen the evidence/positions of the parents and the Guardian.
c) No later than the AVM, the parties should indicate who they seek to be called at any contested FH.
d) A fully completed witness template (with time allocation, plus reading and judgment time) will be filed following the advocates' meeting. If the court approves the listing of a final hearing, once it is approved/amended at the IRH, the template will be attached to the order made that day.
e) The lawyer acting for each party at the AVM and at any hearing where a contested hearing is listed must be ready to complete the witness template. It is simply unfair on the other parties for the advocate to say 'its not my case so I can't give a time allocation'.
f) If the case requires a contested FH the court will consider what are the live issues as to TC, permanence, contact, welfare overall, the completed witness template and then list for a FH.

16) We must aim for fewer hearings, and shorter FFH and Final hearings. Whilst this principle can never cut across the Art 6 rights of any party the following needs to be borne in mind:

a) A separate FFH and welfare hearing must only be in the truly single issue determinative cases, or, where welfare planning really cannot proceed on an either/or basis without core disputed facts being determined. In composite hearings – which will be the norm – LA assessments and CG analyses must be on a contingent basis depending on what facts might be found within that composite hearing.

b) Care needs to be taken to ensure that the facts the LA or any party seeks to prove are necessary to determine the welfare issues in the case.

c) In order to avoid the attendance of single joint experts at court for cross examination, the parties will be expected to make full use of experts' meetings and written questions. Clear reasons will be required to support an application for the attendance of a single joint expert to be submitted to cross examination in court. Part 25 permits questions to be asked by way only of clarification.

d) The witness template approved by the Judge will contain the time allocated to each party for all necessary witnesses. Parties are reminded that it is not necessary to put every point of difference in cross examination, nor put the same points already asked by another advocate and will be expected to keep within their allocation; the obligation is on the advocate to

ensure that the key matters are explored within that time. Usually 2 parents have different solicitors. A conflict is not always apparent, but even if separately represented there is no need for the same points to be put to a witness.

e) Non-compliance is to be avoided at all costs, but where it happens all parties should seek to absorb any timetable slippage in order to avoid the need to re-timetable the IRH.

Generally:

17) Advocates' meetings and PD documents: AVMs are often taking place too close to the hearing to be of any use to the other parties or the court, and often without the advocate who is due to attend the hearing. This then leads to late filing/uploading of pos/sts. Courts cannot cope with the high caseload we have without there being much better compliance about this. From now on, AVMs will be held no later than 3 clear days before a hearing. The LA will file and serve its PD documents by 11am 2 days before the hearing, and the other parties will file and serve by 11am the day before the hearing. We have had a great deal of discussion about these times and we are satisfied that they give the best chance of the hearing being effective. Far too many parents fail to instruct their lawyers in a timely way. Far too many SW teams fail to provide their legal department with instructions and/or draft statements, to enable their legal department to comply with court directions for filing.

18) If a hearing has to be adjourned because of late filing of PD documents, adverse costs orders including disallowing costs may be made against the non-complying party.

19) Every PD document must contain in bold just under the heading 'Week number XX'. The orders must record the week number, and must set out what week the IRH/FFH/FH will be listed, as we used to do.

20) At both courts we are going to implement one/two days per fortnight for each (salaried) CJ/DJ to have a 'shorts' day. On this day will be listed eg 3 x IRH, or 2xIRH plus 2x CMH, or 4/5 x CMH. This is to try to reduce shorter hearings encroaching on our contested public and private cases. Each Judge will have a different day eg mine might be every alternate Tuesday. We are going to try to list more of the case management and IRHs before salaried Judges and more final hearings before part time Judges. As our lists are very full currently, I am asking each listing team to start allocating these one days per fortnight as from June 2023.

21) Types of hearings: we have more courts sitting each day than we have courtrooms. Across the 2 courts more than 20 courts sit on most days, including at the RCJ. We receive public law applications from 11 different LAs; just under 500 in the last year, plus private law, FLAct and adoption. Barnet FC also has civil and financial remedies.

22) Listing of judges/benches/courtrooms/clerks is a difficult process. Sometimes a case listed in one format has to change due to the listing team trying to accommodate every listed case, plus the

stream of 'urgent' and without notice applications which arrive daily. We are now out of the covid pandemic and there is a return to attended hearings.

23) In general, I am prepared to guide the Judges and Magistrates as follows: ICOs, the CMH listed at day 12-18, FFHs, FHs and IRHs should be attended - in court. The CMH listed at day 12-18 is often the first time the parents see that a court is in charge of their child's case. We consider that there is great merit in the parents attending in person at such an important point. All other directions hearings, contact applications, disclosure applications etc can be remote. There might be reasons related to the parties' needs eg an intermediary/interpreter attending a parent, meaning that this is not written in stone. What has to stop, now, are the frequent applications to sit remotely simply for the parties'/advocates' convenience. If a case is listed in a particular format and a party wishes to change the format, a C2 application has to be issued. That is an HMCTS rule and I cannot alter it. If the court changes the format of a hearing, it is honestly for the very good reason that if not, that hearing or another hearing on the same day cannot go ahead due to shortage of courtrooms/clerks.

24) If issuing a C2 application, parties must send in the parties' consents, if any, plus a draft order. Make clear if this needs a hearing or whether it can be dealt with by the Judge considering the draft order. This reduces admin time hugely and frees up admin for essential tasks.

25) All applications, orders, hearing documents etc must be uploaded onto FPL (save in legacy cases). They should not be sent directly to the Judge unless the Judge has directed that you do that in addition to uploading onto FPL. Once an order is uploaded onto FPL by the solicitor, the Judge receives a notification for approval.

26) All references to Judge shall include magistrates/legal advisor where relevant.

27) The Gatekeeping order and CMOrder are being redrafted by 2 of our Judges and I hope to send these to you early next week.

ANNEX A: BREACHES OF COURT ORDERS/ NON COMPLIANCE

How you can expect West London to deal with breaches of Court Orders (Non-compliance) made within public law proceedings and what we will expect from you.

1. There are a range of ways in which Court Orders come to be breached but typical circumstances include (a) failing to file documents or reports on time; (b) failing to attend assessment or appointment dates; (c) failure on the part of a third party to provide documents as directed or sought.

2. In all cases the breach may impact the case timetable and cannot be viewed as welfare neutral for the child. As such there is a fundamental requirement on all parties to notify the Court when they (a) fall into breach of an order; or (b) fail to take a step which will inevitably lead

to a breach of an order albeit at a later date. It is crucial the Court is informed of the same as soon as the party is aware of this fact.

What we expect from you:

3. With this in mind each solicitor has a duty to note the dates set out in a Court Order and to ensure their professional and/or lay clients are equally aware of these dates and the importance of taking all steps to keep to the dates.

4. Each solicitor must inform the Court forthwith by email if they become aware a breach has arisen or a step has not been taken which will inevitably lead to a breach which will impact on the Court timetable.

5. In the event of a breach we expect the parties in the first instance to communicate immediately to establish whether the timetable can be maintained or modified to allow compliance with the Court Order without changing the date of the next Court hearing.

6. If this is possible then the parties must draft and submit a consent order for the attention of the allocated Judge. In such a circumstance the parties can continue to act on the basis the order will be agreed and should not delay further action pending approval.

7. It will be for the party who is in breach to take the lead in this regard to include notifying others of the breach, drafting the order and filing the same.

8. If another party is aware a breach has arisen, but this has not been raised by the party in breach then they should immediately raise this with the other parties and where appropriate notify the allocated Judge.

9. If the breach relates to an order made by a Part-Time Judge and there is uncertainty as to the identity of the allocated Judge, then the above correspondence should be addressed to the DFJ.

10. If the parties cannot agree a timetable which retains the currently listed next hearing, the non-complying party should email the allocated judge (or the DFJ as above) setting out the nature of the breach and why the next hearing cannot be preserved. The allocated judge will then decide whether to hold a non-compliance hearing, and if so when.

11. In the case of breach issues involving third parties (e.g. police or hospitals) the LA should take the lead in reporting such non-compliance to the court. The LA will be expected to prove to the court that they served the third party with the relevant order (in an accessible format for the third party - eg do not use Egress unless certain that the 3P can use Egress) and that it has chased the third party in a timely manner. Such third party issues are almost always effectively dealt with by the usual direction for the police/CPS etc to attend a short hearing if disclosure has not been provided by a certain date. A consent order in respect of this as set out in (6) above will often be appropriate.

12. Every email sent to the allocated judge/DFJ about these matters must say in the subject matter heading ‘NON-COMPLIANCE; ORDER DATE; WEEK NUMBER X’

What you can expect from us:

13. We will generally look to approve any consent orders received under (6) and (11) above in a speedy manner.

14. We are unlikely to approve by email consent orders which vacate an IRH.

15. If a hearing is ineffective due to breach of a court order, the court may well direct a letter from the head of legal services/senior solicitor setting out the reason for (a) non-compliance and (b) not bringing the likely or actual breach to the attention of the allocated judge. That letter should go to the judge, to the DFJ, and to the other parties.

16. If a hearing is ineffective because of breach of a court order, adverse costs orders (including disallowance of costs) may be made against the party in default to reflect the costs wasted by an ineffective hearing.

This Annex A relates to cases allocated to Judges. For cases allocated to the Magistrates, their legal team managers will confirm how they propose to deal with non-compliance.